

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 12184 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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WANKANER NAGAR PALIKA - Petitioner(s)
Versus
DIPAKSINH RAMSINH ZALA & 1 - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner No(s).: 1.
MR DA SURANI for Respondent No(s).: 1.
Mr. H.D. Dave, AGP for Respondent No(s).: 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 11/08/2005****ORAL JUDGMENT**

In this petition under Article 226/227 of the Constitution of India, the petitioner Nagarpalika has challenged the legality and validity of the judgment and award dated 15.1.2005 passed by the Industrial Tribunal, Rajkot in Reference (IT) No.

34/93 in allowing the said Reference directing the petitioner to give pay-scale of Sub-Registrar, i.e. Rs. 1400-1800-EB-50-2300 with effect from 1.4.1991 and to pay the arrears accordingly.

2. The respondent No.1 workman, who has not even completed his Matriculation was appointed as Peon by the petitioner Nagarpalika. It appears from the record that the respondent No.1 workman has raised industrial dispute for getting the grade of Sub-Registrar in the pay-scale of Rs. 1400-2300 with effect from 1.4.1991 which was referred to Industrial Tribunal, Rajkot for its adjudication being Reference (IT) No. 34/93. It was contended on behalf of the respondent No.1 workman that he was appointed and working as 'Sub-Registrar' and that a Resolution also came to be passed by the General Board of the petitioner Nagarpalika appointing as Sub-Registrar and to give the pay-scale of Sub-Registrar to the petitioner and that even the appointment of the petitioner as Sub-Registrar was also approved by the Health Department of the State of Gujarat. The aforesaid Reference was opposed by the petitioner as well as respondent No.2. It was submitted on behalf of the petitioner that there is no sanctioned post of Sub-Registrar and therefore there is no question of giving grade of Sub-Registrar to the respondent-workman. It was also further submitted on behalf of the petitioner that in fact the respondent workman was serving as Peon who has not even completed his

Matriculation; that he was temporarily promoted as a Clerk, however as he was not having requisite qualification he was reverted which was challenged by him before the Industrial Tribunal and he obtained stay in 1985 and thereby he continued as Clerk; in the year 1987 the Chief Registrar directed the Nagarpalika to create a Cell and make arrangement for registering Birth and Death; the workman was given the work of registering Birth and Death vide Resolution No.4; thereafter Resolutions came to be passed and it was decided to send the proposal for giving charge to the Clerk, i.e. Respondent herein to the Government; and by Resolution No.6 dated 30th April 1991 it was decided to get the post of Sub-Registrar sanctioned and to give the respondent workman the pay-scale of Sub-Registrar, i.e. Rs. 1400-2300 with effect from 1.4.1991. However, the Collector, stayed the said Resolution No.6 and permanently stayed the said Resolution exercising powers under Section 258 of the Gujarat Municipalities Act. Therefore, it was requested to dismiss the Reference. The said Reference was also opposed by the respondent Director of Municipalities by contending inter alia that there is no sanctioned post of Sub-Registrar in the petitioner Nagarpalika and therefore there is no question of filling-up the post of Sub-Registrar on permanent basis and that therefore there was no question of giving grade of Sub-Registrar to respondent No.1. It was also submitted that the reliance upon Resolution No.6 dated 30th April 1991 by the respondent No.1 cannot be

accepted as the said Resolution was permanently stayed by the Collector in exercise of power under section 258 of the Gujarat Municipalities Act and therefore requested to dismiss the Reference.

3. In spite of the aforesaid facts and circumstances, the Industrial Tribunal, Rajkot by judgment and award dated 15th January 2005 allowed the aforesaid Reference (IT) No. 34/1993 relying upon the letter of the Deputy Chief Registrar dated 30th March 1993, Resolution No. 6 dated 30th April 1991 passed by the General Board of the petitioner Nagarpalika as well as the communication dated 7.2.1997 by the Chief Registrar and directed the petitioner to give pay-scale of Sub-Registrar in the pay-scale of Rs.1400-2300 to the respondent-workman with effect from 1.4.1991 and further directed to give the difference within 3 months. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Rajkot dated 15th January 2005 in Reference (IT) No. 34/93 in allowing the said Reference the petitioner Nagarpalika has preferred the present Special Civil Application No. 226/227 of the Constitution of India.

4. Mrs. Sangeeta Pahwa, learned advocate appearing for the petitioner has submitted that the judgment and award passed by the Industrial Tribunal is misreading and misappreciation of evidence on record. She has also further submitted that the

Industrial Tribunal has relied upon the Resolution No.6 dated 30th April 1991 as well as the communication by the Deputy Chief Registrar dated 25.2.1993, however Resolution No.6 dated 30th April 1991 came to be permanently stayed by the Collector exercising powers under Section 258 of the Gujarat Municipalities Act and therefore the Industrial Tribunal ought not to have relied upon the said Resolution dated 30th April 1991. She has also further submitted that the Industrial Tribunal in Para 16 has observed that appointment of respondent No.1 as Sub-Registrar as has been approved by the Health Department of the State Government is also contrary to the evidence on record. It is further submitted that when there is no sanctioned post of Sub-Registrar there was no question of giving grade of Sub-Registrar to the respondent-workman and therefore it is submitted that the direction issued by the Industrial Tribunal is exceeding the jurisdiction which requires to be quashed and set aside.

5. Shri Hasit D. Dave, learned AGP has also requested to allow the present Special Civil Application by quashing and setting aside the judgment and award passed by the Industrial Tribunal adopting the arguments canvassed on behalf of the petitioner by adding that there is no post of Sub-Registrar sanctioned by the Director of Municipalities in the petitioner Nagarpalika and therefore there is no question of giving grade of

Sub-Registrar to the respondent No.1.

6. Shri DA Surani, learned advocate appearing for respondent No.1 workman has tried to support the judgment and award passed by the Industrial Tribunal. However, when he was confronted with the fact that the Industrial Tribunal was not right in relying upon Resolution No.6 dated 30th April 1991 as the said Resolution was permanently stayed by the Collector and that there was no approval by the State Government as observed by the Industrial Tribunal, Shri Surani is not in a position to support the judgment and award passed by the Industrial Tribunal and the finding given by the Industrial Tribunal. However, he has submitted that when the petitioner was doing the work of Sub-Registrar, the Industrial Tribunal is justified in directing the petitioner to give the grade of Sub-Registrar in the pay-scale of Rs.1400-2300, and therefore it is requested to allow the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner was appointed as a Peon however he was directed to do some work of Clerk. It is also not in dispute that there is no sanctioned post of Sub-Registrar in the petitioner Nagarpalika. The respondent No.1 relied upon the Resolution dated 30th April 1991 by which the General Board of the Nagarpalika resolved to give pay-scale of Sub-

Registrar of Rs. 1400-2300 to the respondent No.1 workman with effect from 30th April 1991 and to obtain sanction for the same. However, the said Resolution No. 6 dated 30th April 1991 came to be permanently stayed by the Collector exercising power under Section 258 of the Gujarat Municipalities Act. Therefore, the Resolution No.6 dated 30th April 1991, which is relied upon by the Industrial Tribunal, is not in existence at all. Therefore the Industrial Tribunal was not justified in relying upon the Resolution No.6 dated 30th April 1991 while granting the grade of Sub-Registrar to the respondent No.1. Even the finding and the observations made by the Industrial Tribunal that the appointment of respondent No.1 as Sub-Registrar is approved by the Health Department of the State Government of the State Government is also contrary to the evidence on record. There is no such approval granted by the Health Department of the State Government. On the contrary, it is submitted that in absence of any sanctioned post, the post of Sub-Registrar can never be filled-in permanently. In absence of any sanctioned post of Sub-Registrar with the petitioner Nagarpalika, there was no question of granting any grade of Sub-Registrar to the respondent No.1 and therefore the direction issued by the Industrial Tribunal directing the petitioner to give pay-scale of Rs. 1400-2300 with effect from 1.4.1991 is exceeding the jurisdiction and exercising the jurisdiction not vested in it. Under the circumstances, the judgment and award passed by the

Industrial Tribunal cannot be sustained and the same is required to be quashed and set aside.

8. For the reasons stated above, the petition succeeds. The judgment and award passed by the Industrial Tribunal, Rajkot dated 15th January 2005 in Reference (IT) No. 34/1993 is hereby quashed and set aside. Rule is made absolute, however, there will be no order as to costs.

[M.R. Shah, J.]

RM.R.